

**SUMMARY OF THE FCA
CONSULTATION PAPER CP21/3
Changes to the SCA-RTS, guidance on
prudential risk management and
safeguarding and other general updates**

1 February 2021



COMPLIANCY SERVICES
INFORMING ACTION . INSPIRING CONFIDENCE

CONTENTS

1.	INTRODUCTION	3
2.	CHANGES TO SCA-RTS	4
3.	SCA AND CHANGES TO THE FCA APPROACH DOCUMENT	5
4.	PRUDENTIAL RISK MANAGEMENT AND SAFEGUARDING	7
4.1.	<i>SAFEGUARDING:</i>	7
4.2.	<i>PRUDENTIAL RISK MANAGEMENT</i>	8
4.3.	<i>WIND-DOWN PLANS</i>	8
5.	OTHER CHANGES TO THE APPROACH DOCUMENT	9
6.	CHANGES TO REFLECT THE UK'S EXIT FROM THE EU	10
7.	INTRODUCING COMPLIANCY SERVICES	11

1. INTRODUCTION

The Financial Conduct Authority (FCA) have identified barriers to the success of open banking and future innovation in UK payments. To address these, they are proposing amendments to the Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication (the SCA-RTS). At the same time, they are taking the opportunity to update their guidance on prudential risk management and safeguarding, making general updates to several areas and onshoring-related changes and updating the Perimeter Guidance Manual (PERG).

This is all part of the FCA's efforts to make sure that: consumers transact safely with payment firms; payment firms meet their regulatory obligations while competing on quality and value; and consumers and SMEs have access to a variety of payment services. The proposed changes, also, reflect the UK's withdrawal from the European Union (EU) and the end of the transition period.

This short document summarises the Consultation Paper to help Payment and E-money Institutions understand and prepare for the proposed changes.

If you wish to [respond to the consultation](#) you have until 24 February 2021 to respond to questions 5 and 6 in relation to contactless payments. All other aspects of CP21/3 remain open until 30 April 2021.

Compliance Services can support firms in a number of ways in relation to the topics discussed in this consultation. These range from discrete projects in specific areas like safeguarding or wind-down planning, through to an annual retained service agreement that offers a complete programme of support tailored to your individual needs and budget.

2. CHANGES TO SCA-RTS

The FCA proposes some important changes to the SCA-RTS to support competition and innovation in the payments and e-money sector:

- Creates a new exemption from strong customer authentication (SCA) in Article 10A so that customers do not need to reauthenticate every 90 days when accessing account information through an Account Information Services Provider (AISP).
- Mandates the use of dedicated interfaces (such as application programming interfaces (APIs)), rather than modified customer interfaces (MCIs), by Account Servicing Payment Service Providers (ASPSPs) to facilitate third-party provider (TPP) access to retail and SME customers' current accounts (payment accounts under the Payment Account Regulations (PARs)).
- Changes the requirements for publishing interface technical specifications, availability of testing facilities, and fallback mechanisms by account providers. The FCA proposes that the technical specifications and testing facility only be made available to TPPs from the launch of new products and services, rather than six months in advance. Also, the requirement for a fallback interface should only take effect six months after launch. This would allow account providers time to develop such an interface or request an exemption to the requirement to have one.
- Treats ASPSPs with deemed authorisation under the Temporary Permissions Regime as exempt from the requirement to set up a fallback interface, where the ASPSP has an exemption from its home state competent authority (whether that is under the Exit SI or EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018).
- Increases the single and cumulative transaction thresholds for contactless payments from £45 up to £100 (or potentially a maximum of £120) and from £130 to £200 respectively.

3. SCA AND CHANGES TO THE FCA APPROACH DOCUMENT

- The SCA guidance on ‘dynamic linking’ will be amended to clarify how the requirements should be understood for transactions where the amount is not known in advance. The FCA’s view is that SCA would not need to be reapplied where the final amount is higher than the original amount authorised. To make sure that the final payment is reasonably within the amount the customer authorised, the payment should not exceed 20% above the amount originally authorised without further SCA being performed.
- The allocation of liability between a payer’s payment services provider (PSP) and a payee, or a payee’s PSP (e.g. a merchant acquirer) for losses arising from a fraudulent or unauthorised transaction is discussed. It is suggested that the Approach Document be amended to clarify that the payee’s PSP should be liable where it triggers an exemption and the transaction is carried out without applying SCA. This means that the payer’s PSP would refund the customer and would then be entitled to be reimbursed by the payee’s PSP, other than where the payer has acted fraudulently.
- Additional clarification has been provided about what constitutes a valid element for the purposes of SCA and in line with the EBA’s opinion published in June 2019. The changes set out expectations on transaction risk analysis. Fraud rate calculations for transaction risk analyses should only include unauthorised or fraudulent remote electronic transactions for which the PSP was liable, and no other types of transactions.
- The corporate exemption will be applicable to (physical or not) card payments (as well as other payment instruments), provided that those cards are ‘only available to payers who are not consumers’. In other words, those cards should only be available to corporate customers.
- Regarding the ‘authentication code’, it is clarified that the authentication elements the customer uses at the time they access their payment account online (including via a mobile) may be reused if they then initiate a payment (within the same online session). This means a customer could authenticate a payment with one element only, while the firm relies, for example, on a password the customer used when logging into their account. This applies so long as the dynamic linking element is linked to the SCA element carried out at the time the payment is initiated.
- Transactions initiated by the payee only, without any involvement from the payer, are not in scope of SCA. This would cover, for example, continuous payment authorities such as a subscription for a streaming service. However, the updated guidance also clarifies that setting up the mandate with the customer through a remote channel should be subject to SCA (because it may imply a risk of payment fraud or other abuses).

- In line with the changes to contactless point-of-sale transactions (single and cumulative transaction thresholds for contactless payments up from £45 to £100 and from £130 to £200 respectively), the FCA proposes two main ways of monitoring the proposed thresholds. One is that firms may monitor those thresholds by setting a counter, using a host-based solution that enables them to count all transactions except those made offline. The other option is that firms may use a chip-based solution on the physical card, with compliant chip-based cards being reissued. Whichever method they choose, firms should consider the risk of unauthorised or non-compliant contactless transactions being made and monitor the effects of the option in practice.

4. PRUDENTIAL RISK MANAGEMENT AND SAFEGUARDING

The FCA proposes to make its temporary guidance on safeguarding and prudential risk management, published on 9 July 2020, permanent and incorporate it in its Approach Document.

Additionally, they suggest consolidating the guidance on risks and controls relating to the insurance method of safeguarding, issued in December 2019, into the Approach Document and to apply it to the guarantee method of safeguarding.

4.1. Safeguarding:

- Firms should have an acknowledgement from their safeguarding credit institution or custodian, in the form of a letter, or have other documentation. This should demonstrate that the safeguarding credit institution or custodian has no interest in recourse against, or right over, the relevant funds or assets in the safeguarding account. It should also make clear that the funds in the safeguarding account are held for the benefit of the firm's customers. An example letter will be included in the Approach Document. The changes in the guidance also confirms the FCA's view that it considers that a firm holds these funds on trust for its customers.
- The FCA expect firms to document their reconciliation process clearly, with accompanying rationale, as this will help an insolvency practitioner or the FCA with the distribution of funds if the firm becomes insolvent.
- The emended Approach Document will incorporate the requirement for Payment and E-money Institutions, that have to arrange audits of their annual accounts under the Companies Act 2006, to arrange specific annual audits of their compliance with the safeguarding requirements under the Payment Services Regulations (PSRs) and E-money Regulations (EMRs). It is expected that these firms will arrange audits of their compliance with safeguarding arrangements whenever there are changes to their business model that would materially affect their safeguarding arrangements.
- Where a firm safeguards customer funds using insurance, it is important that the arrangements ensure that, as soon as possible after the firm is subject to an insolvency event, the credit balance on the designated safeguarding account will be the same as if the firm had segregated the funds all along. This means the insurance policy must pay out the full amount of any shortfall regardless of how it comes about.
- Furthermore, firms using the insurance method should ensure that:
 - The amount of the insurance cover exceeds the amount of the safeguarded funds being protected by the insurance policy, including to allow for any foreseeable variation in the amount of such safeguarded funds.
 - There will be no level below which the policy does not pay out.

- The policy provides insurance cover for at least as long as the institution is using insurance to protect the safeguarded funds.
- Their insurers understand that the circumstances leading to a claim would provide no grounds to dispute their liability to pay.

4.2. Prudential risk management

- The amended Approach Document introduces requirements to carry out liquidity and capital stress testing. These should analyse the firms' exposure to severe business disruptions and assess the potential impact, using internal and/or external data and scenario analysis. The expectation is that firms should use the results of these tests to help make sure they can continue to meet their conditions of authorisation and own funds requirements.
- Firms should accurately calculate their capital requirements and resources on an ongoing basis and report these correctly to the FCA when required.
- A recommendation will be introduced to reduce exposure to intra-group risk. The FCA considers it best practice for firms to deduct any assets representing intra-group receivables from their own funds. This ensures there is an adequate level of financial resources in each regulated entity at all times to absorb losses.
- When firms are assessing whether they have adequate resources to cover their liquidity risk, the Approach Document now clarifies that the FCA expects firms not to include uncommitted intra-group liquidity facilities. Firms should have in place adequate liquidity risk-management procedures.

4.3. Wind-down plans

It will be a requirement for firms to have a wind-down plan to manage their liquidity and resolution risks. The plan should consider the winding down of the firm's business under different scenarios, including a solvent and insolvent scenario.

5. OTHER CHANGES TO THE APPROACH DOCUMENT

Some additional miscellaneous amendments are proposed by the FCA, specifically:

- Extension of BCOBS and Principles for Business:
 - Reflects the changes introduced by PS19/3 that included: the extension of the FCA’s Principles for Business for payment services and e-money firms; the application of certain communication rules and guidance in the Banking Conduct of Business Sourcebook (BCOBS) to communications with payment service and e-money customers; and guidance on the communication and marketing of currency transfer services.
- Exclusions from the PSRs and the EMRs:
 - Expectations on notifications under the Electronic Communications Exclusion (ECE) and the Limited Network Exclusion (LNE) are clarified. This includes adding more detail on the types of information it expects to see as part of a firm’s notification and the types of firms that may be able to benefit from the LNE. This will also include amendments to PERG 15 to provide additional guidance on ECE and LNE.
- Reporting Requirements:
 - Chapter 13 of the Approach Document will be amended to reflect the changes made in March 2020 to how E-money Institutions should submit regular reporting to the FCA. They are now required to submit reporting via the Gabriel/RegData system.
- Information sharing from ASPSPs to TPPs:
 - Proposed changes to chapter 20 of the Approach Document to clarify that ASPSPs must share the name of the account holder with PISPs, if the name is shown to the customer in their online account. The same applies to the account number and the sort code if these are shown to the customer after they make a payment.
- eIDAS certificates:
 - Chapter 17 of the Approach Document will be amended to reflect the changes made in Article 34 of the SCA-RTS (PS20/13) to require account providers to accept at least one other electronic means of identification issued by an independent party, in addition to eIDAS certificates.

6. CHANGES TO REFLECT THE UK'S EXIT FROM THE EU

The FCA will be updating the Approach Document to reflect the legal changes that resulted from the UK's withdrawal from the EU. It will take account of the transitional provisions that allow firms to delay complying with certain changes in law made as part of the onshoring exercise. This most affects Chapter 2 (Scope), 8 (Conduct of business requirements) and 10 (Safeguarding).

7. INTRODUCING COMPLIANCY SERVICES

INSPIRING CONFIDENCE. INFORMING ACTION

Compliance Services is one of the UK’s leading providers of compliance consultancy and regtech services.

Our award-winning services help firms that are subject to regulation by the Financial Conduct Authority or the Prudential Regulation Authority to become authorised; to manage their ongoing compliance and regulatory obligations; and to empower their staff with focused compliance training.

Our dedicated Payment Services Practice has a dedicated team of consultants specialising in payments.

It is led by James Borley, formerly Head of the FCA’s Authorisations team responsible for payment services, and Accountable Executive for implementation of PSD2 by the FCA. He was also a member of the EBA’s Working Group which developed the information requirements set out in their authorisation ‘Guidelines’.

Our Technical Director - Payments is John Burns, one of the UK’s foremost compliance experts in payment services. He has worked in senior positions for the Association of Payment and Clearing Services, the Payments Council, the Financial Services Authority (now the FCA) and major banks, including Lloyds.

We help to minimise the regulatory burden, offering practical, usable advice and solutions that work for your business and the regulator. It’s through the breadth and depth of their collective expertise and experience that we provide an outstanding service and ensure that compliance makes a positive contribution to your business.



WINNER 2017

Best Consultancy/
Law Firm – FCA
Authorisations



WINNER 2018

Most Effective
FinTech/RegTech
firm



WINNER 2018

Best Consultancy/
Law Firm – Payment
Services



WINNER 2019

Most Innovative
FinTech/RegTech
firm

Compliance Services Ltd
2nd Floor
1 West Smithfield
London
EC1A 9JU

Tel: 020 7060 4499

Email: info@compliance-services.co.uk

Compliance Services Ltd | Registered in England No. 04954156 | Registered Office: 69 Hermitage Road, Hitchin,
Hertfordshire SG5 1DB | ©Compliance Services Ltd, [February 2021]